

Appln. No. 10/760,322
Filed: January 16, 2004
Amendment filed November 3, 2009
Reply to Office action mailed August 3, 2009

REMARKS

Claims 22-39, 41-68, and 70-79 are pending in the Application. Claims 22-39, 41-68, and 70-79 have been rejected in the final Office action mailed August 3, 2009. Claims 71, 74, 75, and 76 are amended and new claims 80-85 are added by this response. Applicants submit that no new matter is added by these amendments. Claims 22, 45, and 54 are independent claims, from which claims 23-39, 41-44, 74, 77, 80 and 81, claims 46-53, 75, 78, 82 and 83, and claims 55-68, 70-73, 76, 79, 84 and 85 depend, respectively.

Applicants respectfully request reconsideration of claims 22-39, 41-68, and 70-79, and consideration of new claims 80-85, in light of the remarks set forth below.

Initially, the Applicants note that a goal of patent examination is to provide a prompt and complete examination of a patent application.

It is **essential** that patent applicants obtain a prompt yet complete examination of their applications. Under the principles of compact prosecution, each claim should be reviewed for compliance with every statutory requirement for patentability in the initial review of the application, even if one or more claims are found to be deficient with respect to some statutory requirement. Thus, USPTO personnel should state all reasons and bases for rejecting claims in the first Office action. Deficiencies should be explained clearly, particularly when they serve as a basis for a rejection. Whenever practicable, USPTO personnel should indicate how rejections may be overcome and how problems may be resolved. **A failure to follow this approach can lead to unnecessary delays in the prosecution of the application.**

M.P.E.P. § 2106(II) (emphasis added).

As such, the Applicants assume, based on the goals of patent examination noted above, that the current Office Action sets forth “all reasons and bases” for rejecting the claims.

Rejections of Claims

Claims 22, 45, and 54 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Hoppal, *et al.* (US 5, 737,331, hereinafter "Hoppal") in view of in view of Kudo, *et al.* (US 5,148,429, hereinafter "Kudo"). Claims 23, 24, 26, 30, 41-44, 49, 55, 56, 59, 70-73, and 74-76 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Hoppal in view of Kudo, and further in view of Bertland (US 5,596,573). Claims 74-79 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Hoppal in view of Kudo and Bertland, and further in view of Li, *et al.* (US 5,617,423, hereinafter "Li"). Claims 25, 31, 32, 36, 47, 48, 50, 60, 61, and 65 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Hoppal in view of Kudo and Bertland, and further in view of Dinkins (US 5,678,172). Claims 27-29, 34, 35, 57, 58, 63, and 64 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Hoppal in view of Kudo and Bertland, and further in view of Averbuch (US 5,268,933). Claims 33, 46, and 62 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Hoppal in view of Kudo and Bertland, and further in view of Smith, *et al.* (US 5,796,772, hereinafter "Smith"). Claims 37-39, 51-53, and 66-68 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Hoppal in view of Kudo and Bertland, and further in view of Stein (US 5,628,055). Applicants respectfully traverse the rejections.

Applicants respectfully note that all of pending claims 22-39, 41-68, and 70-79 are rejected based on Hoppal and Kudo, in various combinations with other references, as allegedly being obvious. Applicants first review the requirements for a rejection based on obviousness.

According to M.P.E.P. §2142, "[t]he examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. If the examiner does not produce a *prima facie* case, the applicant is under no obligation to submit evidence of nonobviousness." M.P.E.P. §2142 further states that "[t]he key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious." As recognized in M.P.E.P. §2142, "[t]he Supreme Court in *KSR International Co. v. Teleflex Inc.*, 127 S. Ct. 1727 (2007), 82 USPQ2d 1385, 1396 noted that the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit." In addition, the Federal Circuit has made clear that "rejections on obviousness cannot be sustained with mere conclusory statements; instead, there must

Appln. No. 10/760,322
Filed: January 16, 2004
Amendment filed November 3, 2009
Reply to Office action mailed August 3, 2009

be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006). See also *KSR*, 127 S. Ct. 1727 (2007), 82 USPQ2d at 1396.

Also as noted in the Manual of Patent Examining Procedure, “[t]o establish *prima facie* obviousness of a claimed invention, **all the claim limitations** must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974).” See MPEP at 2143.03. Further, “**all words in a claim** must be considered in judging the patentability of that claim against the prior art.’ *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA).” See *id.*

Thus, the law is clear that words of a claim cannot be merely disregarded during examination. Instead, all the words in a claim must be considered during the examination process.

Applicants respectfully submit that the Office action has failed to establish a *prima facie* case of obviousness, in accordance with M.P.E.P. §2142. Applicants respectfully submit that the pending claims are allowable over the proposed combinations of references for the reasons set forth during prosecution, and those that follow.

I. The Proposed Combination Of Hoppal And Kudo Does Not Render Claims 22, 45, And 54 Unpatentable

Claims 22, 45, and 54 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Hoppal in view of in view of Kudo. Applicants respectfully traverse the rejection.

With regard to Applicants’ independent claim 22, Applicants respectfully submit that claim 22 recites “[a] phone supporting voice communication via a wireless packet network, the phone comprising: at least one processor for processing outgoing digital voice data converted from a first voice stream to produce packets for transmission via the wireless packet network; the at least one processor operably coupled to a radio transmitter for transmitting the packets via the wireless packet network; the at least one processor operably coupled to a radio receiver for receiving packets via the wireless

packet network; the at least one processor for selectively processing the packets received via the wireless packet network to produce incoming digital voice data for conversion to a second voice stream; wherein the phone supports concurrent, bidirectional voice communication; and wherein the at least one processor monitors the first voice stream for a lack of speech for a minimum period of time.” Claims 45 and 54 recite similar features. Applicants respectfully submit that the cited art does not teach or suggest all aspects of Applicants’ claims 22, 45, and 54.

As shown above, Applicants’ independent claim 22 recites, in part, “at least one processor for processing outgoing digital voice data **converted from a first voice stream to produce packets for transmission via the wireless packet network**,” and “wherein the at least one processor **monitors the first voice stream for a lack of speech for a minimum period of time**.” Thus, Applicants’ claim 22 requires that the “first voice stream,” which is used to produce packets for **transmission** via the wireless packet network is monitored for a lack of speech for a minimum period of time. Therefore, Applicants’ claim 22 requires that the “monitoring for a lack of speech for a minimum period of time” is done **before** transmission. Claims 45 and 54 recite similar language. Applicants respectfully submit that the cited art does not teach or suggest at least this aspect of claim 22.

The Office rejects claims 22, 45, and 54 at pages 2-3, stating, in part:

Hoppal may not adequately teach monitoring a voice stream for a lack of speech for a minimum period of time. However, Kudo better teaches this limitation: Wherein the at least one processor monitors the first voice stream for a lack of speech (voice/silence detector, Kudo et al. c4 21-36) for a minimum period of time (predetermined time of silence, Kudo et al. c4 21-36).

Applicants appreciate recognition by the Office that Hoppal fails to teach at least this aspect of Applicants’ of independent claim 22. Applicants’ respectfully disagree with the Office concerning the teachings of Kudo, and now address the cited portion of Kudo at col. 4, lines 21-36, which is reproduced below:

In accordance with another aspect of the present invention, the signal transmission side transmits, to the signal reception side, a voice packet signal attached in its head part with packets corresponding to packets which belong to the head part and which were regarded as nonvoices by a voice/silence detector. The signal reception side, when receiving a voice packet signal followed by the continuation of a predetermined time of silence (voice absence state), estimates a fluctuation absorbing delay time for the voice packet signal on the basis of transmission delay times between packets corresponding to its head part, attaches packets, corresponding in number to the estimated fluctuation absorbing delay time, to the head part of the received voice packet signal, and reproduces the attached signal.

The portion of Kudo shown above teaches that the “signal transmission side” transmits a “voice **packet** signal” to the “signal reception side.” It also states that the “signal reception side,” estimates a “fluctuation absorbing delay time.” when **receiving** a “voice packet signal” followed by a “predetermined time of silence.” Thus, Kudo teaches that it is the “signal **reception** side” that determines when a “voice packet signal” followed by the “predetermined time of silence,” is **received**. That is, the receiver monitors for the “predetermined time of silence,” not the transmitter. Therefore, Applicants respectfully submit that the teaching of the cited portion of Kudo at col. 4, lines 21-36 is very different from, and does not teach or suggest all aspects of, Applicants’ monitoring, as more fully recited by claim 22. Because the Office admits that Hoppal does not teach at least this aspect of Applicants’ claim 22, and Applicants have shown above that the portion of Kudo, specifically selected by the Office in rejecting this aspect of claim 22 does not teach this feature, it necessarily follows that the combination of Hoppal and Kudo cannot teach at least this aspect of Applicants’ claim 22. Based at least upon the above, Applicants respectfully submit that claim 22 is allowable over the cited art. Further, because claims 45 and 54 recite similar language and are rejected based on the same cited art, Applicants respectfully submit that claims 45 and 54 are also allowable, for at least the same reasons.

Based at least upon the above, Applicants respectfully submit that the Office has not established a *prima facie* case of obviousness, as required by M.P.E.P. §2142, that

the cited art does not render claims 22, 45, and 54 unpatentable, and that claims 22, 45, and 54, and any claims that depend therefrom, are allowable over the proposed combination of Hoppal and Kudo. Accordingly, Applicants respectfully request that the rejection of claims 22, 45, and 54 under 35 U.S.C. §103(a) be reconsidered and withdrawn.

II. The Proposed Combination Of Hoppal, Kudo, And Bertland Does Not Render Claims 23, 24, 26, 30, 41-44, 49, 55, 56, 59, 70-73, And 74-76 Unpatentable

Claims 23, 24, 26, 30, 41-44, 49, 55, 56, 59, 70-73, and 74-76 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Hoppal in view of Kudo, and further in view of Bertland. Applicants respectfully traverse the rejection. Initially, Applicants respectfully submit that claims 23, 24, 26, 30, 41-44, and 74, claims 49 and 75, and claims 55, 56, 59, 70-73, and claim 76 depend, respectively, from claims 22, 45, and 54. Applicants respectfully submit that claims 22, 45, and 54 are allowable over the cited art, in that the Office has not asserted that Bertland remedies the shortcomings of Hoppal and Kudo demonstrated above. Because claims 22, 45, and 54 are allowable over the proposed combination of references, Applicants respectfully submit that claims 23, 24, 26, 30, 41-44, 49, 55, 56, 59, 70-73, and 74-76 that depend therefrom are also allowable, for at least the same reasons. Applicants respectfully submit that at least claims 41-43 and 70-72 are allowable for additional reasons.

With further regard to claims 41 and 70, the Office rejects claims 41 and 70 stating, at page 5, “Re claim 41 (from claim 22) and claim 70 (from claim 54), Kudo further teaches that the minimum period of time is 40 ms or more, thus constituting approximately 200 milliseconds (Kudo et al. c3 1-4).” As an initial matter, the Office has offered only the conclusory statement shown above, and has not provided the required “explicit analysis” or any reasoned articulation, as required by M.P.E.P. §2142. Thus, Applicants respectfully submit that claims 41 and 70 are allowable for that reason alone. Applicants respectfully submit that claims 41 and 70 are allowable for additional reasons. Applicants respectfully submit that claims 41 and 70 depend, respectively, from claim 22 and 54, and that the “minimum period of time” of Applicants’ claims 41 and 70 is therefore the “minimum period of time” of a “lack of speech” for which the “at

least one processor” monitors the “first voice stream”. Applicants now address Kudo at cited col. 3, lines 1-4, which are shown below, in context and underlined:

[Also, from the viewpoint of enhancing noise of the header H and the data D is sent thereto as the data resisting properties, it is not preferable to regard such a] very weak signal as the presence of a voice. Accordingly, voice detection timing takes place as delayed by a specific time, which is 40 ms or more with respect to the actual voice starting time point. In order to prevent [voice head part truncation, occurs when there is a missing head part of the voice signal caused by a failure of the transmission of the beginning part of the voice signal due to a timing lag in voice detection, a predetermined number of blocks prior to voice detection are regarded as the voice presence blocks.]

(emphasis added)

The portion of Kudo shown above teaches that “voice detection timing” is **delayed** “by a specific time, which is 40 ms or more **with respect to the actual voice starting time point.**” In other words, Kudo teaches that voice is not detected until 40 ms or more after the “actual starting time point” of the speech, and does not teach the detection of a minimum of “40 ms or more” of a “lack of speech” as required by claims 41 and 70. Thus, the teaching of “40 ms or more” relied upon by the Office refers not to a “minimum period of time” of a “lack of speech,” as required by claims 41 and 70, but instead clearly refers to a delay in detecting speech that is present, as Kudo specifically states that “detection timing” is **delayed** by a “specific time” which is “40 ms or more” **after** “the **actual voice starting time point.**” This is very different from and does not teach or suggest Applicants’ claims 41 and 70. Applicants respectfully submit that the Office cites only Kudo, and only at col. 3, lines 1-4 as teaching Applicants’ claims 41 and 70, and does not assert that any of the remaining art provides support. Therefore, Applicants respectfully submit that the cited portion of Kudo at col. 3, lines 1-4 does not teach the subject matter of Applicants’ claims 41 and 70, as asserted by the Office, that the Office has not established a *prima facie* case of obviousness, and that claims 41 and 70 are independently allowable over the cited art.

With further regard to claim 42, the Office rejects claim 42 at page 5, stating, “Re claim 42 (from claim 22), Kudo further teaches that the transmission of packets containing digital voice data is interrupted when a lack of speech for the minimum period of time is detected (absence of packets denoting silence, Kudo et al. Fig. 5F).” As an initial matter, the Office again offers only the conclusory statement shown above, and has not provided the required “explicit analysis” or any reasoned articulation, as required by M.P.E.P. §2142. The Office fails to provide any explanation or interpretation of why “Fig. 5F” of Kudo allegedly teaches all of the details of Applicants’ claim 42. Applicants respectfully submit that conclusory statements **are not sufficient** to establish a *prima facie* case of obviousness, and that claim 42 is allowable for at least that reason alone. Applicants respectfully submit that claim 42 is allowable for at least an additional reason.

Applicants’ claim 42 recites “[t]he phone of claim 22 wherein transmission of packets containing digital voice data is interrupted when a lack of speech for the minimum period of time is detected.” Thus, claim 42 is explicit that **transmission** of packets is interrupted **when a lack of speech for the minimum period of time is detected**. Applicants have shown above with respect to claim 22 that the admitted deficiency of Hoppal, namely, the failure to “teach monitoring a voice stream for a lack of speech for a minimum period of time” is not remedied by Kudo. In fact, as Applicants have shown, the portion of Kudo relied upon in the rejection of claim 22, from which this claim depends, teaches any alleged monitoring/detection at the **receiver**, not the transmitter, as required by claim 42. The Office does not assert that Hoppal remedies these failures of Kudo. Therefore, Applicants respectfully submit that claim 42 is independently allowable over the cited art for at least these additional reasons, and respectfully request reconsideration and withdrawal of the rejection.

With further regard to claims 43 and 72, the Office rejects these claims, at page 6, stating “Re claim 43 (from claim 42) and claim 72 (from claim 54), Kudo further teaches that an indication of a change in speech activity is transmitted following the detection of a lack of speech for the minimum period of time (head part packet preceding voice packets, Kudo et al. Fig. 10C).” Initially, Applicants respectfully submit that the Office again offers only the conclusory statement shown above, and does not

provide the required “explicit analysis” or any reasoned articulation, as required by M.P.E.P. §2142. The Office fails to provide any explanation or interpretation of why “Fig.10C” of Kudo, the only art cited, allegedly teaches all of the details of Applicants’ claims 43 and 72. Applicants respectfully submit that such conclusory statements **do not provide adequate support** to establish a *prima facie* case of obviousness, and that claims 43 and 72 are allowable for at least that reason alone. In addition, Applicants have shown above that the cited art does not teach “detection of a lack of speech for the minimum period of time.” The Office does not assert that Hoppal provides support for the rejection to remedy this shortcoming of Kudo. Therefore, it necessarily follows that the Office has not shown that the proposed combination of art teaches Applicants’ claims 43 and 72. Applicants respectfully request reconsideration and withdrawal of the rejection of these claims.

With further regard to claim 71, Applicants respectfully submit that claim 71 recites language similar to that of claim 42, and is rejected over the same art. Initially, Applicants again respectfully submit that the Office has not provided the required “explicit analysis” or any reasoned articulation, set forth in M.P.E.P. §2142. More, specifically, the Office fails to provide any explanation or interpretation of why “Fig. 5F” of Kudo allegedly teaches all of the details of Applicants’ claim 71. Mere conclusory statements **are not sufficient** to establish a *prima facie* case of obviousness. Applicants have also shown above that neither Hoppal nor Kudo teach or suggest detecting lack of speech for a minimum period of time, and the Office has not explained how “Fig. 5F” of Kudo, the only portion of either reference cited as support, teaches **“interrupting transmission of packets containing digital voice data when a lack of speech for the minimum period of time is detected,”** as claimed. Therefore, Applicants respectfully submit that claim 71 is allowable over the cited art for at least the reasons set forth above, and request reconsideration of claim 71.

Applicants respectfully note that although the rejection (Section 5, page 4) identifies claims 74-76 as being rejected over the combination of Hoppal, Kudo, and Bertland, no detailed rejection is provided in the succeeding sections 6-14. Rejections of claims 74-76 do appear at pages 6-7 of the Office action. Therefore, Applicants

Appln. No. 10/760,322
Filed: January 16, 2004
Amendment filed November 3, 2009
Reply to Office action mailed August 3, 2009

assume the rejection of claims 74-76 over only Hoppal, Kudo, and Bertland was an error.

Based at least upon the above, Applicants respectfully submit that claims 23, 24, 26, 30, 41-44, 49, 55, 56, 59, 70-73, and 74-76 are allowable at least for the reason that they are dependent from allowable claims 22, 45, and 54. In addition, Applicants respectfully submit that Applicants have shown that claims 41, 42, 43, 70, 71, and 72 are independently allowable over the cited art. Accordingly, Applicants respectfully request that the rejection of claims 23, 24, 26, 30, 41-44, 49, 55, 56, 59, 70-73, and 74-76 under 35 U.S.C. §103(a) be reconsidered and withdrawn.

III. The Proposed Combination Of Hoppal, Kudo, Bertland, And Li Does Not Render Claims 74-79 Unpatentable

Claims 74-79 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Hoppal in view of Kudo and Bertland, as applied to claims 23, 49, and 55, and further in view of Li. Applicants respectfully traverse the rejection. Initially, Applicants respectfully submit that claims 74 and 77, claims 75 and 78, and claims 76 and 79 depend, directly, from claims 22, 45, and 54, respectively. Applicants are puzzled by the reference to claims 23, 49, and 55, which are not related to claims 74-79. Applicants respectfully submit that claims 22, 45, and 54 are allowable over the cited art, in that the Office has not asserted that Bertland and/or Li remedy the shortcomings of Hoppal and Kudo demonstrated above. Because claims 22, 45, and 54 are allowable over the proposed combination of references, Applicants respectfully submit that claims 74-79 that depend therefrom are also allowable, for at least the same reasons. Accordingly, Applicants respectfully request that the rejection of claims 74-79 under 35 U.S.C. §103(a) be reconsidered and withdrawn.

IV. The Proposed Combination Of Hoppal, Kudo, Bertland, And Dinkins Does Not Render Claims 25, 31, 32, 36, 47, 48, 50, 60, 61, and 65 Unpatentable

Claims 25, 31, 32, 36, 47, 48, 50, 60, 61, and 65 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Hoppal in view of Kudo and Bertland, and further in view of Dinkins. Applicants respectfully traverse the rejection. Applicants respectfully

submit that claims 25, 31, 32, and 36, claims 47, 48, and 50, and claims 60, 61, and 65 depend from claims 22, 45, and 54, respectively. Applicants respectfully submit that claims 22, 45, and 54 are allowable over the cited art, in that the Office has not asserted that Bertland and/or Dinkins remedy the shortcomings of Hoppal and Kudo demonstrated above. Because claims 22, 45, and 54 are allowable over the proposed combination of references, Applicants respectfully submit that claims 25, 31, 32, 36, 47, 48, 50, 60, 61, and 65 that depend therefrom are also allowable, for at least the same reasons. In addition, Applicants respectfully submit that claims 36, 50, and 65 are allowable for additional reasons.

The Office rejects claims 36, 50, and 65 for the same reasons over the same cited art, at page 8, stating "Re claim 36 (from claim 22), claim 50 (from claim 45), and claim 65 (from claim 54), Dinkins further teaches an interface for receiving information representing an image for transmission via the wireless packet network (digital display means, Dinkins c13 19-39)." The cited portion of Dinkins at col. 13, lines 19-39 states the following:

Referring next to FIG. 16 a IDA mobile IDA according to U.S. Pat. No. 5388, 101 is illustrated. In the simplified version of FIG. 16, the transceiver 170 and attached antenna 169 permits two-way wireless communications in the 218-219 MHz band and is compatible with the functions herein before set forth. The double headed arrow notation for the radio waves at the antenna signifies two-way wireless communication. For digital communications, an input register 171 is supplied for received digital data . An output register 172 is provided for retaining interactive subscriber entered messages from a transducer 173, which is typically a manual keyboard or a digital sensing instrument. **Digital display means may be provided for subscriber viewing of the contents of either one or both registers 171, 172.** Thus, a data processor 174, by way of suitable software, controls the system with different modes of operation such as a manual control 175 suitable to keyboard inputting of data from a subscriber, or an automatic monitoring control mode 176 for relaying an alarm or an inventory reading at a subscriber's coin operated vending machine or flow meter.

(emphasis added)

The portion of Dinkins shown above teaches that the “Digital display means” may be provided **“for subscriber viewing of the contents of either one or both registers 171, 172.”** Applicants respectfully submit that “subscriber viewing” of the contents of registers that are for “receiving digital data” and “retaining interactive subscriber entered messages” is quite different from and does not teach or suggest Applicants’ claim 36, which recites “an interface for receiving information representing an image for **transmission** via the wireless packet network.” Applicants respectfully submit that the cited portion of Dinkins teaches that the “registers 171, 172”, not the display, receive digital data or retain subscriber messages, but Dinkins makes no mention of the “display means” being able to receive information representing an image for transmission via the wireless packet network,” as required by claims 36, 50, and 65. Further, the Office simply sets forth a conclusory statement alleging a teaching, without the required “explicit analysis” or any reasoned analysis explaining how and why the cited portion of Dinkins teaches what is asserted. Simple conclusory statements are not sufficient to establish a *prima facie* case of obviousness. In addition, the Office does not assert that any of the remaining art offers any support for the rejection of claims 36, 50, and 65. For at least these reasons, Applicants respectfully submit that the proposed combination of Hoppal, Kudo, Bertland, and Dinkins fails to teach or suggest all of the aspects of Applicants’ claims 36, 50, and 65, as required, and that claims 36, 50, and 65 are independently allowable over the cited art.

Accordingly, for at least the reasons set forth above, Applicants respectfully request that the rejection of claims 25, 31, 32, 36, 47, 48, 50, 60, 61, and 65 under 35 U.S.C. §103(a) be reconsidered and withdrawn.

V. The Proposed Combination Of Hoppal, Kudo, Bertland, And Averbuch Does Not Render Claims 27-29, 34, 35, 57, 58, 63, and 64 Unpatentable

Claims 27-29, 34, 35, 57, 58, 63, and 64 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Hoppal in view of Kudo and Bertland, and further in view of Averbuch. Applicants respectfully traverse the rejection. Applicants respectfully submit that claims 27-29, 34, and 35 and claims 57, 58, 63, and 64 depend from claims 22 and 54, respectively. Applicants respectfully submit that claims 22, 45, and 54 are allowable

over the cited art, in that the Office has not asserted that Bertland and/or Averbuch remedy the shortcomings of Hoppal and Kudo demonstrated above. Because claims 22, 45, and 54 are allowable over the proposed combination of references, Applicants respectfully submit that claims 27-29, 34, 35, 57, 58, 63, and 64 that depend therefrom are also allowable, for at least the same reasons. Applicants respectfully submit that claims 27 and 57 are allowable for additional reasons.

With further regard to claims 27 and 57, the Office rejects claims 27 and 57 at page 9, stating the following:

Re claim 27 (from claim 22) and claim 57 (from claim 54), Bertland teaches combining packets after transfer (Bertland c4 21-30), thus implying a buffer. The prior art, though, may not specifically state a buffer. Nevertheless, Averbuch teaches that a processor buffers incoming digital voice data for an adjustable amount of time to avoid the occurrence of a gap in the second voice stream (frame buffer 323, Averbuch Fig. 4).

The Office cites only Averbuch, and only at Ref. 323 of Fig. 4 as teaching “a processor buffers incoming digital voice data for an adjustable amount of time to avoid the occurrence of a gap in the second voice stream.” As an initial matter, the Office offers only the conclusory statement shown above, and does not provide the required “explicit analysis” or any reasoned articulation, as required by M.P.E.P. §2142. No explanation or interpretation of Averbuch is provided to demonstrate how and why Averbuch at Ref. 323 of Fig. 4 teaches what is alleged. Thus, Applicants respectfully submit that claims 27 and 57 are allowable for at least that reason alone. Applicants respectfully submit that claims 27 and 57 are allowable for additional reasons.

Averbuch makes only one mention of Ref. 323 (frame buffer 323), at col. 6, lines 36-53, which states:

To compensate for the delay A, the size of the **frame buffer 323, 328 waiting to be transmitted over the air** could be monitored or, time stamped pointers could be used. In the case of compensation for a single-cell configuration, a first pointer might be stamped when a base-station 130 or 131 finishes processing the air-frame, and the second

pointer stamped by an air timing strobe, - for example, A, B, C, etc. in air-frame reference 300. In the preferred embodiment, the procedure of time advancing or delaying the packets of compressed voice data transmitted from the vocoder 315 (and hence the processed air-frames) is performed by using in-band or out-of-band vocoder commands. One method of advancing and delaying by using a vocoder is described in 50 GSM recommendation 8.60 released by ETSI/PT 12, Version No. 3.2.0, on January, 1990. In this technique, pulse code modulated (PCM) samples are either advanced or delayed before the vocoder

(emphasis added)

The bolded portion of Averbuch shown above makes it clear that “frame buffer 323” is data awaiting **transmission**, which is quite different from and does not teach or suggest “processing the packets **received** via the wireless packet network to produce incoming digital voice data for conversion to a second voice stream,” as recited by claim 22 (from which claim 27 depends), and “wherein the at least one processor buffers incoming digital voice data for an adjustable amount of time to avoid the occurrence of a gap in the second voice stream,” as recited by claim 27. Further, the Office has failed to explain how the mere identification of the “frame buffer 323” of Fig. 4 by the Office teaches “buffer[ing] incoming digital voice data for an adjustable amount of time to avoid the occurrence of a gap in the second voice stream,” as required by claim 27. Applicants are unable to discern any such teaching in Fig. 4. In addition, the Office does not assert that the remaining cited art remedies these shortcomings of Averbuch. Therefore, Applicants respectfully submit that the Office has not set forth a *prima facie* case of obviousness, as required by M.P.E.P. §2142, that the cited art does not render claims 27 and 57 unpatentable, and that claims 27 and 57 are independently allowable over the proposed combination of Hoppal, Kudo, Bertland, and Averbuch.

With regard to claims 28 and 29, and claim 58, which depend from claims 27 and 57, respectively, Applicants respectfully submit that claims 28, 29, and 58 are allowable at least for the reason that they depend from allowable claims 27 and 57. In addition, the Office has not met its burden in establishing a *prima facie* case of obviousness, as it has not provided the required “explicit analysis” or any reasoned articulation explaining how and why the cited portions of Averbuch teach or suggest all

of the aspects of Applicants' claims 28, 29, and 58. Further, as pointed out above, the buffering provided by the "frame buffer 323" of Averbuch **is in the transmission path**, which is different from the **buffering of the received voice packets required by Applicants claims 27 and 57**, from which claims 28, 29, and 58 depend. That is, Applicants' buffering is of **received** packets, not packets for **transmission**. Further, with respect to claim 29, the asserted "time stamped pointers to test delay" are quite different from and do not teach or suggest a "test packet," as claimed. The Office fails to explain how one would interpret a "time stamped pointer" as a "test packet." Therefore, Applicants respectfully submit that claims 28, 29, and 58 are allowable for at least the reasons set forth above.

Based at least upon the above, Applicants respectfully submit that claims 27, 28, 29, 57, and 58 are independently allowable over the cited art, in addition to being allowable as dependent from allowable claims 22 and 54. Accordingly, Applicants respectfully request that the rejection of claims 27-29, 34, 35, 57, 58, 63, and 64 under 35 U.S.C. §103(a) be reconsidered and withdrawn.

VI. The Proposed Combination Of Hoppal, Kudo, Bertland, And Smith Does Not Render Claims 33, 46, And 62 Unpatentable

Claims 33, 46, and 62 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Hoppal in view of Kudo and Bertland, as applied to claims 23, 49, and 55, and further in view of Smith. Applicants respectfully traverse the rejection. Initially, Applicants respectfully submit that claims 33, 46, and 62 depend directly from claims 22, 45, and 54, respectively, and are again puzzled by the reference to claims 23, 49, and 55. Applicants respectfully submit that claims 22, 45, and 54 are allowable over the cited art, in that the Office has not asserted that Bertland and/or Smith remedy the shortcomings of Hoppal and Kudo demonstrated above. Because claims 22, 45, and 54 are allowable over the proposed combination of references, Applicants respectfully submit that claims 33, 46, and 62 that depend therefrom are also allowable, for at least the same reasons. Accordingly, Applicants respectfully request that the rejections of claims 33, 46, and 62 under 35 U.S.C. §103(a) be reconsidered and withdrawn.

VII. The Proposed Combination Of Hoppal, Kudo, Bertland, And Stein Does Not Render Claims 37-39, 51-53, And 66-68 Unpatentable

Claims 37-39, 51-53, and 66-68 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Hoppal in view of Kudo and Bertland, and further in view of Stein. Applicants respectfully traverse the rejection. Initially, Applicants respectfully submit that claims 37-39, 51-53, and 66-68 depend from claims 22, 45, and 54, respectively, and are once again puzzled by the reference to claims 23, 49, and 55. Applicants respectfully submit that claims 22, 45, and 54 are allowable over the cited art, in that the Office has not asserted that Bertland and/or Stein remedy the shortcomings of Hoppal and Kudo demonstrated above. Because claims 22, 45, and 54 are allowable over the proposed combination of references, Applicants respectfully submit that claims 37-39, 51-53, and 66-68 that depend therefrom are also allowable, for at least the same reasons. Accordingly, Applicants respectfully request that the rejections of claims 37-39, 51-53, and 66-68 under 35 U.S.C. §103(a) be reconsidered and withdrawn.

Newly Added Claims

New claims 80-85 have been added. Claims 80 and 81 depend directly or indirectly from allowable claim 22, claims 82 and 83 depend directly or indirectly from allowable claim 45, and claims 84 and 85 depend directly or indirectly from allowable claim 54. Support for new claims 80-85 may be found, for example, at page 66 of the Application. Applicants respectfully submit that these new claims do not add new matter. Applicants respectfully submit that claims 80-85 are allowable over the cited art for at least the reasons set forth above with respect to claims 22, 45, and 54.

Appln. No. 10/760,322
Filed: January 16, 2004
Amendment filed November 3, 2009
Reply to Office action mailed August 3, 2009

Conclusion

In general, the Office Action makes various statements regarding the claims and the cited references that are now moot in light of the above. Thus, Applicants will not address such statements at the present time. However, Applicants expressly reserve the right to challenge such statements in the future should the need arise (e.g., if such statements should become relevant by appearing in a rejection of any current or future claim).

Applicants respectfully submit that the claims of the present application should be in condition for allowance for at least the reasons discussed above. Allowance of claims 22-39, 41-68, and 70-85 is respectfully requested. If the Examiner has any questions or Applicants can be of any assistance, the Examiner is invited to contact the undersigned.

The Commissioner is hereby authorized to any fees required by this submission, or to credit any overpayment, to the Deposit Account of McAndrews, Held & Malloy, Ltd., Account No. 13-0017.

Respectfully submitted,

Dated: November 3, 2009

McAndrews, Held & Malloy, Ltd.
500 West Madison Street
34th Floor
Chicago, Illinois 60661
(312) 775-8000

By /Kevin E. Borg/
Kevin E. Borg
Reg. No. 51,486